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MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE
FOR CERTIFICATEHOLDERS OF BEAR STEARNS ASSET BACKED
SECURITIES I LLC, ASSET-BACKED CERTIFICATES, SERIES 2006-HE8

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

In re

ROBERT H. MACAWILE AND MARIA T.
MACAWILE,

Debtor(s).

Case No. 10-32188

Chapter 7

D.C. No. PD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

BANK OF AMERICA, NATIONAL
ASSOCIATION AS SUCCESSOR BY
MERGER TO LASALLE BANK
NATIONAL ASSOCIATION, AS TRUSTEE
FOR CERTIFICATEHOLDERS OF BEAR
STEARNS ASSET BACKED SECURITIES I
LLC, ASSET-BACKED CERTIFICATES,
SERIES 2006-HE8,

Movant,

vs.

ROBERT H. MACAWILE AND MARIA T.
MACAWILE, Debtor(s); RYAN
LUCKSINGER, Chapter 7 Trustee,

Respondents.

LBR 4001-1 and 9014-1(f)(2)

DATE: August 23, 2010
TIME: 9:00 a.m.
CTRM: 28

501 "I" Street
Sacramento, CA 95814

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1 Bank of America, National Association as successor by merger to LaSalle Bank National
2 Association, as Trustee for Certificateholders of Bear Stearns Asset Backed Securities I LLC, Asset-
3 Backed Certificates, Series 2006-HE8¹ ("Movant"), moves this court for an order terminating the
4 automatic stay of 11 U.S.C. § 362 as to Movant, so that Movant may commence and continue all
5 acts necessary to enforce its security interest in real property generally described as 8265 Prior Way,
6 Antelope, California 95843.

7 On or about May 10, 2010, Robert H. Macawile and Maria T. Macawile ("Debtors") filed a
8 voluntary petition under Chapter 7 of the Bankruptcy Code, and Ryan Lucksinger was appointed as
9 Chapter 7 Trustee. As a result of said filing, certain acts and proceedings against Debtors and the
10 bankruptcy estate are stayed as provided in 11 U.S.C. § 362.

11 Movant moves this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2).

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I.**

14 **MOVANT IS ENTITLED TO RELIEF FROM THE**
AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2).

15 **NO EQUITY**

16
17 11 U.S.C. § 362(d)(2) provides that relief from the automatic stay shall be granted if the
18 debtor does not have any equity in the property and the property is not necessary to the debtor's
19 effective reorganization.

20 In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that:

21 § 362(d)(2) reflects congressional intent to allow creditors to
22 immediately proceed against the property where the debtor has no
23 equity and it is unnecessary to the reorganization, even where the
debtor can provide adequate protection under § 362(d)(1). (Emphasis
added).

24 Id. at 610 (emphasis added).

25 In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court stated

26
27 ¹ This Motion for Relief from Automatic Stay shall not constitute a waiver of the within party's right to
28 receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004,
notwithstanding Pite Duncan, LLP's participation in this proceeding. Moreover, the within party does not authorize
Pite Duncan, LLP, either expressly or impliedly through Pite Duncan, LLP's participation in this proceeding, to act
as its agent for purposes of service under Fed. R. Bankr. P. 7004.

1 that in determining whether equity exists in the property for purposes of § 362(d)(2), all
2 encumbrances are totaled, whether or not all the lienholders have joined in the request for relief from
3 stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194 (9th Cir.
4 1984).

5 An appropriate cost of sale factor should also be added to determine if the debtor has any
6 equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R. 283, 289
7 (Bankr. S.D. Cal. 1982).

8 On or about July 10, 2006, Debtors, for valuable consideration, made, executed and delivered
9 to PRO30 Funding ("Lender") a Note in the principal sum of \$384,000.00 (the "Note"). Pursuant to
10 the Note, Debtors are obligated to make monthly principal and interest payments commencing
11 September 1, 2006, and continuing until August 1, 2036, when all outstanding amounts are due and
12 payable. The Note provides that, in the event of default, the holder of the Note has the option of
13 declaring all unpaid sums immediately due and payable. A copy of the Note is attached to the
14 concurrently served and filed Exhibits to the Declaration in Support of Motion for Relief From
15 Automatic Stay ("Exhibits") as exhibit A and incorporated herein by reference.

16 On or about July 10, 2006, the Debtors made, executed and delivered to Lender a Deed of
17 Trust (the "Deed of Trust") granting Lender a security interest in real property commonly described
18 as 8265 Prior Way, Antelope, California 95843 (the "Real Property"), which is more fully described
19 in the Deed of Trust. The Deed of Trust provides that attorneys' fees and costs incurred as a result of
20 the Debtors' bankruptcy case may be included in the outstanding balance under the Note. The Deed
21 of Trust was recorded on July 19, 2006, in the Official Records of Sacramento County, State of
22 California. A copy of the Deed of Trust is attached to the Exhibits as exhibit B and incorporated
23 herein by reference.

24 Subsequently, Lender's beneficial interest in the Deed of Trust was sold, assigned and
25 transferred to Movant. A copy of the Corporation Assignment of Deed of Trust evidencing the
26 Assignment of the Deed of Trust to Movant is attached to the Exhibits as exhibit C and incorporated
27 herein by reference.

28 ///

1 The obligation under the Note is in default as of June 1, 2009, for failure to make payments
2 to Movant. As of June 24, 2010, the total obligation due and owing under the Note is in the
3 approximate amount of \$418,221.71, representing the principal balance of \$384,353.25, interest in
4 the sum of \$27,687.04, escrow advances in the amount of \$3,079.04, late charges in the amount of
5 \$909.88, and a recoverable balance of \$2,192.50. This is an approximate amount for purposes of this
6 Motion only, and should not be relied upon as such to pay off the subject loan as interest and
7 additional advances may come due subsequent to the filing of the Motion. An exact payoff amount
8 can be obtained by contacting Movant's counsel. Further, Movant has incurred additional post-
9 petition attorneys' fees and costs in bringing the instant Motion. Moreover, the total arrears under the
10 Note are in the approximate sum of \$40,929.97, excluding the post-petition attorneys' fees and costs
11 incurred in filing the instant Motion.

12 **II.**

13 **RELIEF FROM STAY**

14 **LACK OF EQUITY**

15 Movant is informed and believes that, based on the Debtors' bankruptcy Schedules and
16 Statements, the fair market value of the Property is approximately \$210,000.00. Copies of the
17 Debtors' bankruptcy Schedules "A" and "D" are collectively attached to the Exhibits as exhibit D
18 and incorporated herein by reference.

19 Based on the above, Movant maintains that the equity in the Property is as follows:

| | |
|-------------------------|--------------------|
| Fair Market Value: | \$210,000.00 |
| Less: | |
| Movant's Trust Deed | \$418,221.71 |
| Costs of Sale (8%) | <u>\$16,800.00</u> |
| Equity in the Property: | \$<225,021.71> |

24 As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since this
25 is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is entitled to
26 relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

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28 /././

1 III.
2 MOVANT IS ENTITLED TO RELIEF FROM THE
3 AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1).

4 CAUSE - LACK OF ADEQUATE PROTECTION

5 Pursuant to the provisions of 11 U.S.C. §§ 361 and 362(d)(1), Movant is entitled to adequate
6 protection of its interest in the Property.

7 Movant submits that adequate protection in this case requires normal and periodic cash
8 payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to
9 Movant, including all attorneys' fees and costs incurred in the filing of this motion.

10 Movant is informed and believes that Debtors are presently unwilling or unable to provide
11 adequate protection to the Movant and there is no probability that adequate protection can be
12 afforded to Movant within a reasonable time.

13 By reason of the foregoing, Movant is entitled to relief from stay under 11 U.S.C.
14 § 362(d)(1), based upon the failure of Debtors to provide adequate protection to Movant.

15 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

16 1. Terminating the automatic stay of 11 U.S.C. § 362, as it applies to the enforcement by
17 Movant of all of its rights in the Real Property under the Note and the Deed of Trust;

18 2. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

19 3. Granting Movant leave to foreclose on the Real Property and to enforce the security
20 interest under the Note and the Deed of Trust, including any action necessary to obtain possession of
21 the Property;

22 4. Permitting Movant to offer and provide Debtors with information re: a potential
23 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
24 Mitigation Agreement, and to enter into such agreement with Debtors;

25 5. Alternatively, in the event this court declines to grant Movant the relief requested
26 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to
27 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
28 and all other deeds of trust encumbering the Real Property, including Debtors' obligations to pay

1 when due (a) the monthly installments of principal and interest, as required under the Note;
2 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors in order to
3 protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the
4 filing of this motion;

5 6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion be
6 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law;
7 and

8 7. For such other and further relief as the court deems just and proper.

9
10 Dated: August 3, 2010

PITE DUNCAN LLP

11 /s/ GABRIEL OZEL (CA SBN 269098)

GABRIEL OZEL

12 Attorneys for BANK OF AMERICA, NATIONAL
13 ASSOCIATION AS SUCCESSOR BY MERGER TO
14 LASALLE BANK NATIONAL ASSOCIATION, AS
15 TRUSTEE FOR CERTIFICATEHOLDERS OF
16 BEAR STEARNS ASSET BACKED SECURITIES I
17 LLC, ASSET-BACKED CERTIFICATES, SERIES
18 2006-HE8